IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (ST.) NO. 17449 OF 2007
WITH
CIVIL APPLICATION NO. 203 OF 2007

Rama Kashinath Naik ...Appellant

V/s.

1. State of Maharashtra
2. Seeta Rama Naik ...
Respondents

Mr. Santosh Punder i/by Mr. D.R. Sanghavi for the Appellant

Ms. G.P. Mulekar, Assistant Government Pleader,
for Respondent No.1

Mr. M.J. Joshi with Mr. G.B. Manurkar for Respondent No. 2.

CORAM: **J.N. PATEL AND A.A. SAYED, JJ.**

DATE: **AUGUST 22, 2007**

P.C.:-

1. Heard the learned counsel for the parties.

2. The appellant challenges the order dated 15th June, 2007 passed by the learned Family Court below Exhibits 4 and 10, wherein it has been specifically observed that the petition under

Section 6 of the Hindu Minority and Guardianship Act, 1956 is pending before the Court; and during the said period, the younger son of the couple, by name Raj, was in the custody and care of the respondent-wife. It appears from the order that the appellant-father has removed the child from the custody of the respondent-mother, under the guise of reconciliation, and, therefore, the learned Judge of the Family Court passed an order directing the In-charge of Ponda Police Station, Goa, to get Raj from the custody of the petitioner, i.e., the appellant, and hand over him to the respondent-mother. We are of the view that the parties should not take law in their hands, particularly when they submit to the jurisdiction of the Court, and the matter of the custody of the younger child, i.e., son Raj, is being adjudicated by the Court; and it was not proper on the part of the appellant to have taken away the child from the custody of the respondent-mother.

3. On specific directions issued by this Court, the appellant has produced both the children before us. Insofar as the elder child, Neha, who is 9 years' old, is concerned, she is already residing with the appellant, and we have to say nothing in the matter. But insofar as the custody of the younger child, i.e.,

Raj, is concerned, who is 5 years' old and who was admittedly in the custody of the mother, his custody deserves to be restored back to the mother, and, therefore, we do not find that the learned Judge of the Family Court committed any error or illegality in passing the impugned order. The child is produced before this Court.

4. We direct the appellant to hand over the custody of the child Raj to the mother, and shall not interfere with the custody of the child, without seeking appropriate orders from the Family Court, where the matter is pending.

5. It was vehemently argued by the learned counsel for the appellant that the child is not keeping well, and deserves medical attention. This aspect was considered by the learned Judge of the Family Court. The appellant is an ex-Service man. He is entitled for medical treatment under the E.C.H. Scheme, which is available to him throughout the country. If the appellant-father is really concerned about the health of the child, he should not only provide maintenance to the mother regularly, but also make medical facilities available to him under the Scheme, even at

Mumbai, to the respondent-mother as well as the child, and co-operate in the matter. In our presence, the child has been handed over to the mother.

6. We may make it clear that the appellant would have a right to have access to the child, i.e., his son Raj, in the Family Court, for which he can move an application to the Family Court to get the child produced, and the access should be monitored by a counsellor of the Family Court. The parties are at liberty to move the Family Court to decide the petition as expeditiously as possible.

7. We further make it clear that the Family Court would not be, in any way, influenced by the conduct of the appellant, which was probably out of paternal instinct, took a wrong step in haste.

8. With the aforesaid directions, both the appeal and civil application stand dismissed.

9. In view of the fact that the custody of the child has been handed over to the respondent-mother, the warrant issued by the

learned Judge of the Family Court for securing the custody of the child stands cancelled.

J.N. PATEL, J.

A.A. SAYED, J.